



Why Lawyers in Misdemeanor Cases Are Critical

OSPD/MPDA Spring Public Defenders
Defender Conference April 28, 2016
Natchez, Mississippi

Professor Robert C. Boruchowitz
Professor from Practice
Director, The Defender Initiative

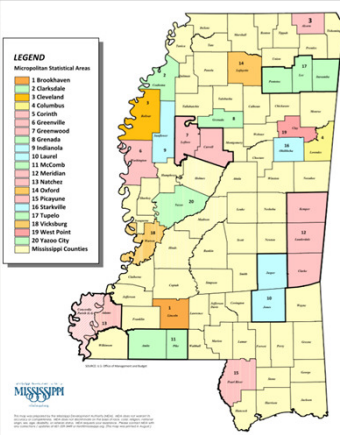
Seattle University School of Law
Defender Initiative
Fred T. Korematsu Center for Law and Equality

- Be proximate to people and places
- Change the Narrative
- Remain hopeful
- Be willing to do uncomfortable things

Mississippi

- Population estimate, July 1, 2015: 2,992,333



LEGEND
Mississippi Statistical Areas

1	Brockton
2	Chickadee
3	Chickadee
4	Columbus
5	Cumby
6	Greenville
7	Greenwood
8	Grenada
9	Indian
10	Laurel
11	McComb
12	Meridian
13	Natchez
14	Oxford
15	Piquette
16	Shelbyville
17	Tupelo
18	Wicksburg
19	West Point
20	Yazoo City
21	Mississippi Counties

Number of Courts

- There are 82 Justice Courts with 197 judges. Justice Court judges are the only Mississippi judges elected in partisan races.
- There are 226 Municipal Courts. Most municipalities have one municipal judge, although a few jurisdictions have several. Most municipal judges are appointed by governing bodies of municipalities.
 - Many are part-time.

Number of Selected Misdemeanors 2014 National Reports (With only 73 agencies reporting)

- Drunkenness—3898
- Disorderly Conduct—4457
- Vagrancy-105

MISSISSIPPI	Metropolitan Statistical Area	Area actually reporting	1,365,250
		Estimated total	72.7%
	Cities outside metropolitan areas	Area actually reporting	588,934
		Estimated total	48.5%
	Nonmetropolitan counties	Area actually reporting	1,039,895
		Estimated total	42.4%
	State Total	Area actually reporting	2,994,079
		Estimated total	100.0%

- <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-us/2014/crime-in-the-us-2014/tables/table-6f>
- <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-us/2014/crime-in-the-us-2014/tables/table-5>

Mississippi Justice Courts January-June 2015

- Approximately 158,000 entries after deleting bound over cases
 - Annual rate of 316,000, or one for every 9 people in state
- Various categories of Speeding: 43,691 entries, or an annual rate of 87,382—
 - One Speeding case for every 34 people in the state

Profanity—105 cases in six months

- At least four were jailed. At least one was “GUILTY IN ABSTENTIA FINED 66.25 PLUS COURT COST T LHFORFEIT CASH BOND T LHSENT TO LISA FORFEITURE PAPERS LH”
- One African American woman was sentenced as follows: “Not allow on campus for 1year.”

§ 97-29-47. Profanity or drunkenness in public place

- If any person shall profanely swear or curse, or use vulgar and indecent language, or be drunk in any public place, in the presence of two (2) or more persons, he shall, on conviction thereof, be fined not more than one hundred dollars (\$ 100.00) or be imprisoned in the county jail not more than thirty (30) days or both.

Jones v. State, 798 So. 2d 1241, 1248 (Miss. 2001)

- Supreme Court noted:
- We have not had an opportunity to interpret the statute; however, the Mississippi Court of Appeals has recently had an occasion to define what it believes the use of “profanity” sufficient to warrant an arrest entails.

Brendle v. City of Houston, 759
So. 2d 1274 (Miss. Ct. App. 2000)

- Defendant was convicted in municipal court of public profanity and resisting arrest, and Circuit Court, Chickasaw County, R. Kenneth Coleman, J., affirmed conviction after trial de novo. Defendant appealed. The Court of Appeals, Lee, J., held that under circumstances, defendant's allegedly spoken use of the "F" word, in addition to saying "God d---", and "d---", in presence of police officer was not use of fighting words.
- Reversed and vacated.

Brendle v. City of Houston, 759
So. 2d 1274, 1284 (Miss. Ct. App. 2000)

- Even assuming that Brendle used the "F" word in his speech, Brendle's language while vulgar, indecent, and arguably profane, did not rise to the level of "fighting words." His language was not "by its very utterance" sufficient to incite an immediate breach of the peace.

- This is not to say that shouting profanities at a police officer is appropriate or proper behavior in any circumstance. In fact, such conduct may give rise to a situation where an immediate breach of the peace may occur. However, the facts in this case do not support such a situation. **As such, we find that the circuit court committed manifest error in determining that Brendle's conduct gave rise to probable cause for his arrest for a violation of Mississippi's statute against public profanity.** Accordingly, we vacate Brendle's conviction for public profanity.

Jones

- However, this Court is now reluctant to adopt the reasoning of the Court of Appeals under these facts, and finds the reasoning in *Terry v. State* to be dispositive of this issue. Based upon a careful review of the record, this Court finds that Deputy Newman, did not have sufficient evidence to believe that a breach of the peace was being threatened or a crime was about to be committed. Accordingly, all evidence of acts of resisting the unlawful arrest should be excluded.

If no lawyer...

- How would a person know how to defend against a profanity charge?

Various Categories of Littering

- 377 Cases in Six Months
- Some people did jail time

GUILTY-JAIL TIME FOR FINE
 SERVED TIME IN JAIL /
 SERVED TIME IN JAIL
 TIME SERVED/NO OTHER COST COLL
 TIME SERVED/NO OTHER COST COLL

What about Bearden v. Georgia?

- If the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacks the resources to pay.

Summerall v. State, 132 So. 3d 613, 615 (Miss. Ct. App. 2013)

Paraphernalia 6 months jail/\$500 fine

PERRY	POSSESSION OF PARAPHERNALIA [41-29-139]	11/24/14	1. GUILTY-JAIL TIME FOR FINE
PERRY	POSSESSION OF PARAPHERNALIA [41-29-139]	1/16/15	1. GUILTY-JAIL TIME FOR FINE
PERRY	POSSESSION OF PARAPHERNALIA [41-29-139]	1/29/15	1. GUILTY-JAIL TIME FOR FINE
PERRY	POSSESSION OF PARAPHERNALIA [41-29-139]	1/29/15	1. GUILTY-JAIL TIME FOR FINE
PERRY	POSSESSION OF PARAPHERNALIA [41-29-139]	1/16/15	1. GUILTY-JAIL TIME FOR FINE
PERRY	POSSESSION OF PARAPHERNALIA [41-29-139]	12/10/14	1. GUILTY-JAIL TIME FOR FINE
PERRY	POSSESSION OF PARAPHERNALIA [41-29-139]	3/15/15	1. GUILTY-JAIL TIME FOR FINE

Miss. Code. Ann. § 41-29-139

- (d)(1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law

Vagrant—97-35-37

- The following persons are and shall be punished as vagrants, viz.:
- (a) Persons known as tramps, wandering or strolling about in idleness, who are able to work and have no property to support them.
- (b) Persons leading an idle, immoral or profligate life, who have no property to support them, and who are able to work and do not work.

- (f) Every common gambler or person who for the most part maintains himself by gambling.
- (g) Every able-bodied person who shall go begging for a livelihood.
- (h) Every common prostitute.
- (k) Every able-bodied person who lives without employment or labor, and who has no visible means of support.

Tramps—97-35-29

- Any male person over sixteen years of age, and not blind, who shall go about from place to place begging and asking subsistence by charity, and all who stroll over the country without lawful occasion, and can give no account of their conduct consistent with good citizenship, shall be held to be tramps.

Examples of Counties Still Charging Vagrancy and Tramp

MAGNOLIA PIKE	VAGRANCY	97-35-37	12/6/14	1 NOLLE PRO CHARGE NOLLE PROSECUTE
POPLARVILLE PEARL RIVER	VAGRANCY	97-35-37	12/31/14	1 SERVED TIME IN JAIL
FOREST SCOTT	VAGRANT / BEGGING	97-35-29	4/12/09	1 GUILTY

Adams County, Mississippi

■ Population estimate: 31,254

Race and Hispanic Origin	
① White alone, percent, July 1, 2014, (V2014) (a)	44.6%
① White alone, percent, April 1, 2010 (a)	42.7%
① Black or African American alone, percent, July 1, 2014, (V2014) (a)	53.4%
① Black or African American alone, percent, April 1, 2010 (a)	53.5%
① American Indian and Alaska Native alone, percent, July 1, 2014, (V2014) (a)	0.4%
① American Indian and Alaska Native alone, percent, April 1, 2010 (a)	0.3%
① Asian alone, percent, July 1, 2014, (V2014) (a)	0.5%
① Asian alone, percent, April 1, 2010 (a)	0.4%
① Native Hawaiian and Other Pacific Islander alone, percent, July 1, 2014, (V2014) (a)	0.0%
① Native Hawaiian and Other Pacific Islander alone, percent, April 1, 2010 (a)	Z
① Two or More Races, percent, July 1, 2014, (V2014)	1.0%

Adams County, Natchez Justice Court

January-June 2015

- Seat belt: **170**
- Speeding 1-9 Over: **424**
- Possession of Marijuana: 20
- Possession of Drug Paraphernalia: 12
- Expired Motor Vehicle Inspection Sticker: **81**
- Driving While License Suspended: **53 (43 Black, 10 White)**
- Operating ATV on Road: 3 (all Black)
- Window Tint Law: 17 (14 Black, 3 white)

- Projected annual totals:
- 848 Speeding cases-- one for every 36 people in the county.

The Democrat Natchez Municipal Court Reports

- Examples from recent months—
- First offense shoplifting—fines of \$573 and \$643
- Sentenced to 30 days suspended for one year pending good behavior. Banned from all Walmart locations. Fine set at \$573.
- February 29, first offense:
 - Sentenced to 30 day with 26 days suspended for one year pending good behavior. Credit given for four days served. Banned from store. Fine set at \$648.
 - dismissed in consideration of defendant taking responsibility. Banned from all Walmart locations.
- March 2—*Not* guilty shoplifting, banned from all Walmart locations
- <http://www.natchezdemocrat.com/2016/03/07/court-case-conclusions-monday-march-6-2016/>

Minor Crimes, Massive Waste
The Terrible Toll of America's Broken Misdemeanor Courts



Absence of Counsel
Despite the clear ruling by the U.S. Supreme Court that persons accused of misdemeanors have a right to court-appointed counsel, a significant percentage of defendants in misdemeanor courts never receive a lawyer to represent them.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
APRIL 2009

JURISPRUDENCE THE LAW, LAWYERS, AND THE COURT. APRIL 27 2012 11:33 AM

Why Misdemeanors Aren't So Minor

Too often the criminal justice system is pronouncing people guilty without evidence, lawyers, or a chance to plead their case.

By Alexandra Natapoff

3.3k 0

■ Yesterday, people across America pleaded guilty to crimes they didn't commit. This isn't something new or extraordinary. Every year, the American criminal system punishes thousands of people who are not guilty. These routine wrongful convictions never make it into headlines because they are misdemeanors, petty offenses like trespassing, disorderly conduct, or loitering.

Why Misdemeanors Matter

- **Huge Commitment of Resources When All Governments Are Struggling To Make Ends Meet.**
- ***Fairness—Fundamental rights are being denied to thousands of people in the places that should protect them the most.***
- **Perception of Justice—Most people who actually go to a court go to these courts. Their respect for American justice is shattered when they experience the problems discussed here.**
- **Racial Disparity—People charged and convicted are disproportionately of color**

Economic Penalties

Increasing fines, costs, and other fees have become staggering. Cumulative impact of all of the economic obligations a significant problem for most defendants.

"Courts have demonstrated an almost total disregard for the ability of the defendants to afford the amounts assessed."

Criminal convictions diminish employment prospects and eligibility for housing and other benefits.

McCormack, "Economic Incarceration", Windsor Yearbook of Access to Justice, 2007.

The Washington Post


Justice Department warns local courts about unlawful fines and fees

By Matt Zapotosky March 14

The Justice Department is asking local courts across the country to be wary of how they slap poor defendants with fines and fees to fill their jurisdictions' coffers, warning that such practices often run afoul of the U.S. Constitution and have serious real-world consequences.

In a letter that will be sent Monday morning to the chief judges and court administrators in all 50 states, Vanita Gupta, the head of the department's Civil Rights Division, and Lisa Foster, director of the Office for Access to Justice, wrote that illegal enforcement of fines and fees had been receiving increased attention in recent years, and the Justice Department had a "strong interest" in making sure the rights of citizens were protected.

"Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape," Gupta and Foster wrote. "Furthermore, in addition to being unlawful, to the extent that these practices are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents."



U.S. Department of Justice
Civil Rights Division
Office for Access to Justice

Washington, D.C. 20530

March 14, 2016

Dear Colleague:

1. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful.
2. Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.
3. Courts must not condition access to a judicial hearing on prepayment of fines or fees.

Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.

5. Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.
6. Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.
7. Courts must safeguard against unconstitutional practices by court staff and private contractors.

Consequences

- The consequences that can result from any conviction, including a misdemeanor conviction, have expanded significantly.
- These consequences can be quite grave. The defendant can be **deported, denied employment, or denied access to a wide array of professional licenses**. A person convicted of a misdemeanor may be ineligible for **student loans** and even expelled from school. Additional consequences can include the **loss of public housing** and access to **food assistance**, which can be dire, not only for the misdemeanant but also for his or her family. Fines, costs and other fees associated with convictions can also be staggering and too frequently are applied without regard for the ability of the defendants to pay the assessed amounts.
- “No criminal conviction should be regarded as minor or unimportant.”
Minor Crimes, Massive Waste.

Other considerations...

- There also is a cost impact as cases that might be dismissed with counsel continue and result in jail and probation. [20 % dismissal rate in Seattle]
- Racial disproportionality

Racial Disparity

- The crisis in America's public defense system has a much more acute impact on communities of color. The dramatic under-funding and lack of oversight of America's indigent defense services, described at length above, has placed people of color in a second class status in the American criminal justice system.
- *The Terrible Toll of America's Broken Misdemeanor Courts*, p. 47

Incarceration Trends in Mississippi 1988-2008

The use of imprisonment in Mississippi has been felt disproportionately in communities of color. African Americans comprise 37% of the state's population, but 68% of persons in prison. Conversely, whites, who comprise 60% of the state's population, represent 31% of the state prison population (see Figure 2). A 2007 analysis by The Sentencing Project found that blacks in Mississippi were incarcerated at 3.5 times the rate of whites. No separate data are compiled for Latinos in Mississippi.

- http://www.sentencingproject.org/doc/publications/inc_MississippiTrends.pdf

MISSISSIPPI YEAR 2008 CRIME AND PUNISHMENT CHART

(All maximum penalties subject to change each year & misdemeanor sentencing may vary per city and county, fines do not include assessments)

[Click Here](#) to order your **FREE WALL CHART** of this Mississippi Chart.

Give us your **Comments** on this chart and receive a **FREE 11"x17" TRI-FOLD CHART**

[Free Charts are paid for by the NCPLC and these [Mississippi Sponsors](#)]

www.CrimeAndPunishment.Net

NEW ADDITIONS ARE HIGHLIGHTED IN YELLOW

All Information Obtained From: District Attorney Cono Caranna, Chief Weatherford Gulfport Police Department, Harrison County Sheriff George Payne, Congressman Gene Taylor, District Attorney G. Gilmore Martin and is intended for educational purposes only.

Felony Conviction

A Felon can Not own a gun, vote, sit on jury or be employed in a job, which requires a State License.

CRIME

PUNISHMENT

Miss. Code Ann. § 63-7-59

§ 63-7-59. Windows and windshield wipers

(7) No person shall install any tinted film, darkening material, glazing material or any other material upon the windshield or any window of a motor vehicle which, after the installation thereof, would result in such vehicle being in violation of subsection (2) of this section.

(8) No label shall be issued for a vehicle on which the windshield or any window of the vehicle has been darkened by the installation of tinted film or by other means, except as authorized under this section.

(9) It shall be unlawful for any person to alter or reproduce any label or certificate of medical exemption approved by the Commissioner of Public Safety under this section for the purpose of misleading law enforcement officers or motor vehicle inspection stations, or to knowingly use any approved label or certificate except as authorized by this section.

(10) Any person violating subsection (7), (8) or (9) of this section, upon conviction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or imprisonment in the county jail for not more than three (3) months, or by both such fine and imprisonment.

■ Up to Three Months in Jail and \$1000 fine

Miss. Code Ann. § 63-1-57

§ 63-1-57. Driving after suspension or revocation

Any person whose license issued pursuant to this article or driving privilege as a nonresident has been canceled, suspended or revoked as provided in this title or in [Section 93-11-157](#) or [93-11-163](#), as the case may be, and who drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended or revoked, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two (2) days or more than six (6) months. There may be imposed in addition thereto a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) for each offense.

Credits
 Laws 1938, Ch. 143, § 33; Laws 1985, Ch. 376, § 22; Laws 1988, Ch. 563, § 2; Laws 1996, Ch. 507, § 13, eff. July 1, 1998.

■ Up to Six Months in Jail


Miss. Code Ann. § 63-11-40

§ 63-11-40. Driving after suspension or revocation

Any person whose driver's license, or driving privilege has been cancelled, suspended or revoked under the provisions of this chapter and who drives any motor vehicle upon the highways, streets or public roads of this state, while such license or privilege is cancelled, suspended or revoked, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than forty-eight (48) hours nor more than six (6) months, and fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00).

The commissioner of public safety shall suspend the driver's license or driving privilege of any person convicted under the provisions of this section for an additional six (6) months. Such suspension shall begin at the end of the original cancellation, suspension or revocation and run consecutively.

Credits
 Laws 1983, Ch. 466, § 11, eff. July 1, 1983.



**COXWELL &
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Helping Mississippians for over 35 years.
We understand results matter.

Criminal Trespass

Criminal trespass is a frequently occurring issue in and around the Jackson Metro area. A variety of neighborhood and property line misunderstandings can lead to criminal trespass charges. In most cases, a criminal trespass charge will be made if there was intent to knowingly enter private property or if damage was done to private or public property.

GETTING YOUR CHARGES THROWN OUT

Ultimately, your lawyer's top priority should be getting your charges thrown out all together. Even non-violent relatively minor crimes can leave your otherwise spotless record tarnished. You need an attorney who understands the importance of keeping your record clean. Your attorney should be just as dedicated to defending clients in cases involving trespass as they are in high-profile murder cases.

■ "Your attorney should be just as dedicated to defending clients in cases involving trespass as they are in high-profile murder cases."

1968: University of Washington Professor John M. Junker Wrote

[A] large majority of the [people] annually charged with non-traffic misdemeanors must, if they are financially unable to hire an attorney, face the **bewildering, stigmatizing and (especially at this level) assembly-line criminal justice system without the assistance of counsel.**"

William Hellerstein: The Importance of the Misdemeanor Case on Trial and Appeal 1970

...the criminal court, the misdemeanor court, is such an abomination that it destroys any myth or notion that I ever had about the realities of American criminal justice. Only a reappraisal of the importance of what transpires in that court by defender agencies and efforts consistent with that reappraisal can provide some improvement.

- I have seen judges advise people of their charges, take "waivers" of the right to counsel, take guilty pleas, and sentence defendants in a total of ninety seconds or less per case.
- I have talked with a judge who told me that there was a culture in his county of pleading guilty without a lawyer, and another judge who told me he was helping homeless people by taking their guilty pleas and giving them a few days in a warm jail cell.
- Another judge became hostile when I discussed with him his practice of discouraging defendants from asserting their right to counsel, and he used profanity when telling me to get out of his office.

Fifty Years After Gideon: It is Long Past Time to Provide Lawyers for Misdemeanor Defendants Who Cannot Afford to Hire Their Own
 Seattle Journal for Social Justice
 Robert C. Boruchowitz

Having a lawyer can make a difference

San Francisco Public Defender

Misdemeanor
 161: Jury trials
 624: Motions filed
 207: Dismissals on trial calendar
 76: Average cases per attorney at any given time
 17: Participants in the Volunteer Attorney Program
 48: Trials by volunteer attorneys
 159: Motions by volunteer attorneys

Misdemeanor Trial Outcomes

Outcome	Percentage
Not Guilty/Hung/Mistrial/Dismissal	33%
Mixed Verdict	35%
Guilty	32%

What's wrong with not providing a lawyer?

- No opportunity for defendant to understand options or consequences of conviction or to test government's case
- Violates *Padilla v. Kentucky*: "...the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel."
- Jargon and abbreviations likely not understandable by layperson defendants

ABA Ten Principles Of A Public Defense Delivery System (2002)

- 3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel...
- Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.

Don't I Need A Lawyer?



Pretrial Justice and the
Right to Counsel at First
Judicial Bail Hearing

A Report of The Constitution Project
National Right to Counsel Committee

March 2015

- **Recommendation 1:** Jurisdictions should appoint counsel in a timely manner prior to initial bail and release hearings.

- **Recommendation 2:** The first appearance hearing should be held in public and should provide the opportunity for defense counsel, pretrial release services representatives and family members to present information supporting the least onerous pretrial release conditions appropriate.

Recommendation

- An assigned defense lawyer should be appointed at the earliest possible time to ensure that he or she has the opportunity to interview the defendant prior to the first appearance hearing and to provide adequate opportunity to prepare an argument. Preparation includes access to a telephone to call family members, friends and other individuals who can verify information needed to establish a defendant's community ties, and access to a defendant's prior criminal history and appearance in court.

...empirical data confirms that counsel's effective advocacy and offering of credible information has succeeded in gaining pretrial release on recognizance for two and a half times as many defendants charged with misdemeanors and non-violent crimes than those defendants without a lawyer.

Why counsel is required at first appearances

- Accused persons generally cannot without help
- * understand the elements of the charge, possible defenses, or the full nature of the consequences of a conviction;
 - *challenge a finding of probable cause;
 - *advocate effectively for personal recognizance release or reduced bail;
 - *advocate effectively for sentencing alternatives.

Because of all of the foregoing...

- Accused persons generally cannot without help make a valid decision about waiving counsel or waiving trial.
- The fairness of the proceedings and the integrity of the court are at risk.

The Judges Recognize...


- The reality we see every day is that people entering our criminal justice system are confused by or ignorant of legal concepts, often unsophisticated, low on the literacy continuum, frightened, intimidated by authority, and faced by increasingly complicated direct and collateral consequences of conviction.

District and Municipal Court Judges' Association

April 6, 2009

Honorable Charles W. Johnson
Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, Washington 98504-0929


Sincerely,



Judge Marilyn Paja
2008/09 DMCJA President

What Counsel Should Be Doing at These Hearings

- Challenge probable cause
- Talk with client about rights, silence, ability to post bail, residence, work, references, time in community; assess any immediate needs of client
- Advocate for release
- Confirm appointment process beyond first appearance
- Consider appellate review and pursue as appropriate
- Begin investigation and research



STOP

Before you enter your plea

Consider the Possible Effects of Pleading Guilty

You have a right to a defense attorney, even if you can't pay for one. Your attorney will explain what can happen because of your plea and help you decide what to do.

It is important to consider possible consequences such as jail time and fines, examples of losses you may want to discuss with your attorney include:

IMMIGRATION

- If you are not a U.S. citizen, pleading guilty to a crime can result in deportation.
- If you are a U.S. citizen, pleading guilty to a crime can result in deportation.
- If you are a U.S. citizen, pleading guilty to a crime can result in deportation.

FAMILY ISSUES

- If you are a parent, pleading guilty to a crime can result in loss of custody of your child.
- If you are a parent, pleading guilty to a crime can result in loss of custody of your child.
- If you are a parent, pleading guilty to a crime can result in loss of custody of your child.

EMPLOYMENT

- If you are an employee, pleading guilty to a crime can result in loss of your job.
- If you are an employee, pleading guilty to a crime can result in loss of your job.
- If you are an employee, pleading guilty to a crime can result in loss of your job.

HOUSING


- If you are a tenant, pleading guilty to a crime can result in loss of your housing.
- If you are a tenant, pleading guilty to a crime can result in loss of your housing.
- If you are a tenant, pleading guilty to a crime can result in loss of your housing.

PUBLIC BENEFITS

- If you are a recipient of public benefits, pleading guilty to a crime can result in loss of your benefits.
- If you are a recipient of public benefits, pleading guilty to a crime can result in loss of your benefits.
- If you are a recipient of public benefits, pleading guilty to a crime can result in loss of your benefits.

PROSECUTION AND OTHER CHARGES

- If you are charged with a crime, pleading guilty to a crime can result in loss of your rights.
- If you are charged with a crime, pleading guilty to a crime can result in loss of your rights.
- If you are charged with a crime, pleading guilty to a crime can result in loss of your rights.



ALTO!

After you enter a decision

Considere las consecuencias de admitir culpabilidad.

Usted tiene el derecho de consultar a un abogado, incluso si no puede pagar uno. El abogado le explicará lo que puede suceder a consecuencia de su declaración y lo ayudará a decidir lo que quiere hacer.

Además de posibles consecuencias tales como encarcelamiento y multas, ejemplos de pérdidas que usted puede querer discutir con su abogado incluyen:

IMMIGRACION

- Si usted no es ciudadano de los Estados Unidos, admitir culpabilidad puede resultar en deportación.
- Si usted es ciudadano de los Estados Unidos, admitir culpabilidad puede resultar en deportación.
- Si usted es ciudadano de los Estados Unidos, admitir culpabilidad puede resultar en deportación.

EMPLEO

- Si usted es empleado, admitir culpabilidad puede resultar en pérdida de su trabajo.
- Si usted es empleado, admitir culpabilidad puede resultar en pérdida de su trabajo.
- Si usted es empleado, admitir culpabilidad puede resultar en pérdida de su trabajo.

EFFECTO DE LA FAMILIA

- Si usted es padre, admitir culpabilidad puede resultar en pérdida de custodia de su hijo.
- Si usted es padre, admitir culpabilidad puede resultar en pérdida de custodia de su hijo.
- Si usted es padre, admitir culpabilidad puede resultar en pérdida de custodia de su hijo.

SEVICIOS SOCIALES

- Si usted es beneficiario de servicios sociales, admitir culpabilidad puede resultar en pérdida de dichos servicios.
- Si usted es beneficiario de servicios sociales, admitir culpabilidad puede resultar en pérdida de dichos servicios.
- Si usted es beneficiario de servicios sociales, admitir culpabilidad puede resultar en pérdida de dichos servicios.

PERDA DE VIVIENDA

- Si usted es inquilino, admitir culpabilidad puede resultar en pérdida de su vivienda.
- Si usted es inquilino, admitir culpabilidad puede resultar en pérdida de su vivienda.
- Si usted es inquilino, admitir culpabilidad puede resultar en pérdida de su vivienda.

SERVICIOS SOCIALES

- Si usted es beneficiario de servicios sociales, admitir culpabilidad puede resultar en pérdida de dichos servicios.
- Si usted es beneficiario de servicios sociales, admitir culpabilidad puede resultar en pérdida de dichos servicios.
- Si usted es beneficiario de servicios sociales, admitir culpabilidad puede resultar en pérdida de dichos servicios.

PROBLEMAS EDUCACIONALES

- Si usted es estudiante, admitir culpabilidad puede resultar en pérdida de su estatus de estudiante.
- Si usted es estudiante, admitir culpabilidad puede resultar en pérdida de su estatus de estudiante.
- Si usted es estudiante, admitir culpabilidad puede resultar en pérdida de su estatus de estudiante.

RESTRICCIONES PERSONALES Y FAMILIARES

- Si usted es miembro de una familia, admitir culpabilidad puede resultar en pérdida de su estatus de miembro.
- Si usted es miembro de una familia, admitir culpabilidad puede resultar en pérdida de su estatus de miembro.
- Si usted es miembro de una familia, admitir culpabilidad puede resultar en pérdida de su estatus de miembro.

REMEMBER

You have a RIGHT to an attorney right now.

An attorney can help you understand the consequences of your plea.

If you cannot afford an attorney, an attorney will be provided at no cost.

If you don't have an attorney, you can ask a judge to be appointed and have a continuance and then hire your attorney.

RECUERDE:

Usted tiene derecho a un abogado de inmediato.

Un abogado puede ayudarle a comprender las consecuencias de su declaración.

Si usted no puede pagar un abogado, el juez proporcionará uno de costo cero.

Si usted no tiene un abogado, puede pedir al juez que le designe uno y que lo pague usted.

La traducción simultánea puede ayudarle a comprender mejor los servicios de un abogado.

Washington State Bar Council

Public Defense Form

- *Right to Counsel is Triggered at First Appearance—*Rothgery*
- *First Appearance Can Be Critical Stage—*Hurrell Harring*
- *Counsel can make a key difference—release, investigation...*Powell v. Alabama*
- *Current waiver forms and colloquies are often misleading and inadequate

Rothgery v. Gillespie, 544 U.S. 191 (2008)

"This Court has held that the right to counsel guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed on his liberty."

Argersinger v. Hamlin, 407 U.S. 25, 34-35 (1972)

Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

In addition, the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result. The Report by the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 128 (1967), states:

The calendar is long, speed often is substituted for care, and casually arranged out-of-court compromise too often is substituted for adjudication. Inadequate attention tends to be given to the individual defendant, whether in protecting his rights, sifting the facts at trial, deciding the social risk he presents, or determining how to deal with him after conviction. The frequent result is futility and failure.

Invalid Waiver of Counsel

- Court did not alert the defendant to his right to the assistance of counsel in entering a plea. The defendant needs to know retained or appointed counsel can assist at the plea stage by working on the issues of guilt and sentencing.

■ *Iowa v. Tovar*

**Von Moltke v. Gillies
332 U.S. 708 (1948)**

- It is the solemn duty of a federal judge before whom a defendant appears without counsel to make a thorough inquiry, and to take all steps necessary to insure the fullest protection of this constitutional right at every stage of the proceedings.

- The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility. To be valid, such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.

- A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered.

- This case graphically illustrates that a **mere routine inquiry** -- the asking of several standard questions followed by the signing of a standard written waiver of counsel -- may leave a judge entirely unaware of the facts essential to an informed decision that an accused has executed a valid waiver of his right to counsel.

DECISION
Kimberly HURRELL-HARRING et al.,
on Behalf of Themselves and All Others
Similarly Situated, Appellants,
v.
STATE of New York et
al., Respondents.
 Court of Appeals of New York.
 May 6, 2010.

Background: Individuals who, as indigent criminal defendants, were assigned public defenders in various criminal prosecutions brought putative class action against State, alleging that public defense system was deficient and presented unacceptable risk that indigent defendants were being denied constitutional right to counsel. The Supreme Court, Albany County, Eugene P. Devine, J., denied State's motions to dismiss, and State appealed. The Supreme Court, Appellate Division, 66 A.D.3d 84, 883 N.Y.S.2d 349, reversed. Individuals appealed as of right.

Holdings: The Court of Appeals, Lippman, C.J., held that:
 (1) individuals stated cognizable claim for constructive denial of their Sixth Amendment right to counsel, and
 (2) arraignment was critical stage of criminal proceeding for purposes of right to counsel, even if guilty plea was not elicited at arraignment.

Affirmed as modified. Pigott, J., filed dis-

■ ...whether the **State** has met its foundational obligation under Gideon to provide legal representation.... It is alleged that the experience of these plaintiffs is illustrative of what is a fairly common practice in the aforementioned counties of arraigning defendants without counsel and leaving them, particularly when accused of relatively low level offenses, unrepresented in subsequent proceedings where pleas are taken and other critically important legal transactions take place.

■ arraignment itself must under the circumstances alleged be deemed a critical stage...it is clear from the complaint that plaintiffs' pretrial liberty interests were on that occasion regularly adjudicated with most serious consequences, both direct and collateral, including the loss of employment and housing, and inability to support and care for particularly needy dependents. **There is no question that a bail hearing is a critical stage of the State's criminal process.**

New York—Favorable Settlement

WHEREAS, Plaintiffs and the State intend that the terms and measures set forth in this Settlement Agreement will ensure counsel at arraignment for indigent defendants in the Five Counties, provide caseload relief for attorneys providing Mandated Representation in the Five Counties, improve the quality of Mandated Representation in the Five Counties, and lead to improved eligibility determinations;

(1) The **State** of New York (the "State") shall ensure.....

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ALBANY		
----- X		
KIMBERLY HURRELL-HARRING, et al., on Behalf of Themselves and All Others Similarly Situating,	:	
	:	
Plaintiffs,	:	Index No. 8866-07
	:	(Connolly, J.)
-against-	:	
	:	
THE STATE OF NEW YORK, et al.,	:	
	:	
Defendants.	:	
----- X		
<u>STIPULATION AND ORDER OF SETTLEMENT</u>		

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ALBANY		EXECUTION COPY
----- X		
KIMBERLY HURRELL-HARRING, et al., on Behalf of Themselves and All Others Similarly Situating,	:	
	:	
Plaintiffs,	:	Index No. 8866-07
	:	(Connolly, J.)
-against-	:	
	:	
THE STATE OF NEW YORK, et al.,	:	
	:	
Defendants.	:	
----- X		
III. <u>COUNSEL AT ARRAIGNMENT</u>		
(A) (1) The State of New York (the "State") shall ensure, within 20 months of the Effective Date and continuing thereafter, that each criminal defendant within the Five Counties who is eligible for publicly funded legal representation ("Indigent Defendant") is represented by counsel in person at his or her Arraignment. A timely Arraignment with counsel shall not be delayed pending a determination of a defendant's eligibility.		

Mississippi Constitution

■ **SECTION 26.** In all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both....

UNIFORM RULES OF PROCEDURE FOR JUSTICE COURT

RULE 3.02 REPRESENTATION BY COUNSEL

Initial appearance, preliminary hearings, and representation by counsel shall be conducted according to the Uniform Rules of Circuit and County Courts approved by the Mississippi Supreme Court.

RULE 3.08 PLEAS

A defendant may plead not guilty, or guilty, or, with the permission of the court, nolo contendere.

(a) **Entry of a Guilty Plea.** A person who is charged with the commission of a criminal offense and is represented by an attorney may appear before the court at any time the judge may fix, and enter a plea of guilty to the offense charged and be sentenced by the court.

(b) **Voluntariness.** Before the court may accept a plea of guilty, the court must determine that a plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements. A showing that the plea of guilty was voluntary and intelligently made must appear in the record.

(c) **Advice to the Defendant.** When the defendant wishes to plead guilty to an offense charged, it is the duty of the court to address the defendant personally and to inquire and determine:

- (1) that the accused is competent to understand the nature of the charge against him;
- (2) that the accused understands the nature and consequences of his plea, and the maximum and minimum penalties provided by law;
- (3) that the accused understands that by pleading guilty he waives his constitutional right of a trial by jury, the right to confront and cross-examine adverse witnesses, and the right against self-incrimination; and
- (4) if the accused is not represented by an attorney, that he is aware of his right to an attorney at every stage of the proceedings and that one will be appointed to represent him if he is indigent.

Right to Attorney at Every Stage

(4) if the accused is not represented by an attorney, that he is aware of his right to an attorney at every stage of the proceedings and that one will be appointed to represent him if he is indigent.

UNIFORM RULES OF CIRCUIT AND
COUNTY COURT PRACTICE

■ 6.03 Initial Appearance

■ The judicial officer shall also advise the defendant of the following:

■ That the defendant is not required to speak and that any statements made may be used against him/her;

■ If the defendant is unrepresented, **that the defendant has the right to assistance of an attorney, and that if the defendant is unable to afford an attorney, an attorney will be appointed to represent him/her;**

■ That the defendant has the right to communicate with an attorney, family or friends, and that reasonable means will be provided to enable the defendant to do so: ...

Rule 8.05
PRO SE DEFENDANTS

When the court learns that a defendant desires to act as his/her own attorney, the court shall on the record conduct an examination of the defendant to determine if the defendant knowingly and voluntarily desires to act as his/her own attorney. The court shall inform the defendant that:

1. The defendant has a right to an attorney, and if the defendant cannot afford an attorney, the state will appoint one free of charge to the defendant to defend or assist the defendant in his/her defense.
2. The defendant has the right to conduct the defense and that the defendant may elect to conduct the defense and allow whatever role (s)he desires to his/her attorney.
3. The court will not relax or disregard the rules of evidence, procedure or courtroom protocol for the defendant and that the defendant will be bound by and have to conduct himself/herself within the same rules as an attorney, that these rules are not simple and that without legal advice his/her ability to defend himself/herself will be hampered.

4. The right to proceed pro se usually increases the likelihood of a trial outcome unfavorable to the defendant.
5. Other matters as the court deems appropriate.

After instructing the defendant and ascertaining that the defendant understands these matters, the court will ascertain if the defendant still wishes to proceed pro se or if the defendant desires an attorney to assist him/her in his/her defense. If the defendant desires to proceed pro se, the court should determine if the defendant has exercised this right knowingly and voluntarily, and, if so, make the finding a matter of record. The court may appoint an attorney to assist the defendant on procedure and protocol, even if the defendant does not desire an attorney, but all disputes between the defendant and such attorney shall be resolved in favor of the defendant.

What Judges Can Do

- Provide thorough advice to defendants on what counsel can do for them and the disadvantages of going pro se
- Do thorough inquiries on waivers of right to counsel and right to trial
- Make sure that people who plead guilty understand the elements of the charge and the consequences of a guilty verdict.
 - *Use the WSBA CPD form.*
- Provide counsel to eligible people.

Yelm, WA Municipal Court

Judge's observation after providing counsel

- [i]t does seem that more cases are reduced/dismissed at 1st appearance, and that is, I believe, due to the presence of both the prosecutor and public defender.
- Since going all public defender, I have noticed two things: 1) many more defendants are represented by counsel, and 2) As a result, things move more smoothly at both the arraignment and pre-trial stages....The presence of the public defender improves communication between the sides greatly.

Pasco, WA City Attorney Comments

- Those accused are expressing more confidence in the system and the overall experience is less intimidating. The Court, Defenders, and Prosecutors have all expressed that the system seems to be working much better with more equitable results. It is going smoothly and there is a reduction in jail time, however, I do not have specific numbers to share at this time.

Spokane Municipal Defender Observations

- We can identify immediately **mentally ill defendants** and either make a referral to mental health court or initiate a sanity commission process with a declaration by the first appearance attorney.
- We help the court in giving another side to the prosecutor's **bail request**, thus increasing the number of defendants OR'd over the prosecutor's objection or given reduced bond amounts.
- On **warrant cases**, we often give information to the defendant as to when he missed court so that he can better articulate why he missed court, increasing his chances for OR. We can quickly discuss **medical needs** with the inmate and the need for OR for upcoming surgeries or procedures, or identify high-risk pregnancies to support OR.
- We quickly gather information on **ties to the community**, so we can get people back to school or back to work without a lengthy interruption.

Spokane City Defender

- We **identify cases that can be easily resolved and set them for early hearings for dispositions**.
- We **challenge probable cause**, and when we win, the defendants are released.
- Defenders can **begin investigation immediately** as appropriate, particularly on DV cases and excessive force issues.
- We **coordinate the client's court dates** to reduce the chance of another warrant in case they bond out.
- We can more easily **determine that a defendant needs an interpreter**, and we move that defendant's case to the afternoon of the same day with an in-court appearance with some time for the court to arrange for an interpreter, even if only by the language line over the phone.
- Kathy Knox

Judicial Misconduct Cases Indicate Abuse of Power and Failure to Follow Procedure in Courts of Limited Jurisdiction

Ample room for error in Justice Court

- Boland testified that many documents are handwritten in justice court, which leaves ample room for error. Boland testified that, typically, unless sending someone to jail, the sentence will be written on the jacket of the file. If someone has been sentenced to serve time, the sentence will be written on the jacket as well as in an order and mittimus. However, since the original file was lost at the justice court level, the jacket was not available to determine what Boland wrote as the original sentence for Kinstley.
- *Mississippi Comm'n on Judicial Performance v. Boland*, 998 So. 2d 380, 384 (Miss. 2008) overruled by *Mississippi Comm'n on Judicial Performance v. Osborne*, 11 So. 3d 107 (Miss. 2009) overruled by *Mississippi Comm'n on Judicial Performance v. Osborne*, 16 So. 3d 16 (Miss. 2009)

“I had no idea what I was signing”

- Prince further testified that while at his initial appearance, he was never advised he had a right to a trial, a right to a jury, or a right to bring witnesses forward. Prince stated Boland was “turning the pages [of forms],” and “pointing as she went, you know, saying sign here, sign here. I had no idea what I was signing.” ...The documents Prince signed included a waiver-of-right-to-an-attorney form. ...
- ¶ 27. Contrary to Prince's testimony, Boland testified that she read Prince the waiver-of-attorney form and that she believed Prince understood he was waiving the right to an attorney.

Court's Decision on the Judge

- It is clear that Boland exceeded all parameters of her authority as a judge.

Mississippi Comm'n on Judicial Performance v. Boland, 998 So. 2d 380, 390 (Miss. 2008) overruled by *Mississippi Comm'n on Judicial Performance v. Osborne*, 11 So. 3d 107 (Miss. 2009) overruled by *Mississippi Comm'n on Judicial Performance v. Osborne*, 16 So. 3d 16 (Miss. 2009)

3) The magnitude of the offense and the harm suffered.
 ¶ 45. The maximum penalty Boland initially was authorized to issue was the posting of a \$500 peace bond. However, Prince was incarcerated without authority of law, either in the Hinds County Detention Center or in drug treatment from September 9, 2005, until November 4, 2005. In order to have Prince released, the Prince family expended approximately ***\$92 \$4,250** in attorney's fees, plus the costs of the drug treatment facility. The Prince family testified they suffered emotional, as well as financial, harm.

- Boland was not only a justice court judge, but a licensed attorney in this state. ..., it doesn't take a law degree, or for that matter, a high school diploma, to read that incarceration is not provided for in the statute. Boland, acting on information that Prince "terrorized the neighborhood," used her power as a judge to incarcerate him in jail or confine him to a drug treatment facility. Boland freely acknowledged that she thought peace bonds would be a good way to get people into her drug court. **Incarcerating Prince as opposed to requiring him to post bond was clearly an abuse of Boland's power as a judge.**

No Training, Inconsistent Understanding Among Judges

- Boland testified she received no training on peace bonds, but that she had consulted Judge Skinner about whether she could place conditions on a peace bond and she testified Judge Skinner told her she could. At the hearing before the Commission, Boland called Judge Skinner to testify as to his knowledge of peace bonds. Judge Skinner testified that every justice court judge with whom he had spoken had a different theory on what a peace bond is and whether it is civil or criminal in nature.

Mississippi Comm'n on Judicial Performance v. Boland, 998 So. 2d 580, 589 (Miss. 2008) affirmed by Mississippi Comm'n on Judicial Performance v. Osborne, 11 So. 3d 107 (Miss. 2009) affirmed by Mississippi Comm'n on Judicial Performance v. Osborne, 16 So. 3d 16 (Miss. 2009).

Overruled only on this point

- To the extent that *Boland II* may be interpreted to hold that this Court is limited in its available constitutional sanctions against a judge when the judge either resigns from office or is voted out of office by his or her constituents, and effectively removed, *Boland II* is overruled by this Court.

Mississippi Comm'n on Judicial Performance v. Osborne, 16 So. 3d 16, 25 (Miss. 2009)

Mississippi Comm'n on Judicial Performance v. Fletcher, 686 So. 2d 1075, 1076-77 (Miss. 1996)

- The Respondent incarcerated a defendant without notice or hearing. He also sentenced a defendant to more jail time than allowed by law and found the same defendant guilty of perjury based upon his own affidavit and warrant. In addition, perjury is a felony and therefore beyond the jurisdiction of the Municipal Court.

Mississippi Comm'n on Judicial Performance v. Neal, 774 So. 2d 414 (Miss. 2000)

- Judge Neal fined Beck and Banyon in excess of his statutory authority and sentenced both to jail time in excess of his statutory authority. Judge Neal lacked jurisdiction to hear the perjury charge, as perjury is a felony and beyond the jurisdiction of the justice court.

¶ 14. SUNFLOWER COUNTY JUSTICE COURT JUDGE LARRY NEAL SHALL BE PUBLICLY REPRIMANDED FOR WILLFUL MISCONDUCT AND CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE THAT BRINGS THE JUDICIAL OFFICE INTO DISREPUTE AND SHALL ⁴¹⁸PAY THE COSTS OF THIS PROCEEDING IN THE AMOUNT OF \$266.20 WITHIN THIRTY (30) DAYS.

Mississippi Comm'n on Judicial Performance v. Roberts, 952 So. 2d 934, 943 (Miss. 2007) holding modified by Mississippi Comm'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013)

On or about October 7, 2002, Mr. Dennis M. Klubnik filed simple assault-domestic violence charges against his ex-wife, Jodi Klubnik, at the Harrison County Justice Court, Cause No. GT056/1453. The matter was set for trial on July 16, 2004 before Respondent. Ms. Klubnik plead [sic] guilty to the charges and was fined \$500.00, which was suspended, and assessed costs of court. After the plea was accepted by Respondent, he voiced his opinion in open court that it was ridiculous that Mr. Klubnik had filed the charges against the ex-wife and that the domestic violence statutes were designed to protect women.

On January 15, 2004, Jodi Klubnik filed charges against Dennis Klubnik for trespassing, Cause No. GT058/131, Harrison County Justice Court. Klubnik was arrested on that date. A trial was scheduled for September 13, 2004. At trial, Respondent remanded the charges to the file for a period of two (2) years. Respondent did not allow Klubnik to present any evidence and threatened to incarcerate him for six (6) months if he appeared before him again within the next two (2) years.

Several other matters including revocation of probation without proper notice.

Court held: Judge Roberts' actions involved procedural matters and ignorance of the law. Reprimand, 30 days suspension, fine, costs.

Mississippi Comm'n on Judicial Performance**v. Skinner**, 119 So. 3d 294, 300 (Miss. 2013)

- Judge Skinner committed willful misconduct and conduct prejudicial to the administration of justice Judge Skinner recused himself from the aforementioned cases, then, with full knowledge that he was recused, reinserted himself and took further action.... Having recused himself from a case, a judge has no more authority to take action in that case than does the ordinary citizen on the street. Furthermore, Judge Skinner abused the contempt power by issuing arrest warrants for indirect criminal contempt that led to the Coopers being held without bond for seventy-two hours without notice or a hearing.

Mississippi Comm'n on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss. 1994)

- Held that public reprimand is warranted for setting accused's bail while serving as municipal judge and thereafter seeking to reduce bail while acting as practicing attorney representing accused.

Boyd P. Atkinson, a Municipal Court Judge

Mississippi Comm'n on Judicial Performance v. Chinn, 611 So. 2d 849, 853 (Miss. 1992)

- Judge Chinn is charged with reducing a DUI to a reckless driving charge, resulting in a \$250 fine for a motorist as a result of a plea bargain. The maximum fine for reckless driving is \$100. **Judge Chinn's defense is that he never had read the statutes.** He claimed the county attorney was present during all this time, and it was his responsibility to insure that the judge followed the law. He believed that he had the authority to suspend fines, and did so in good faith.

Chinn

- This Court has stated that ignorance of the law is no defense for justice court judges. *In re Bailey*, 541 So.2d 1036, 1039 (Miss.1989). Although justice court judges are not required by law to be trained in the law, it is presumed that they are knowledgeable in the area in which they administer justice. The statutes do not allow a judge to reduce a DUI to reckless driving.
- *The Supreme Court, Roy Noble Lee, C.J., held that ticket fixing, failure to sentence criminals in accordance with statute, dismissal of misdemeanor cases not in accordance with statute, and interference with rotation cases assigned to other judges in attempt to influence other judges, warrants removal from office of justice court judge.*
- Justice Court Judge Chinn removed from office.

Ways to Cut Caseload and Costs

- Diversion of Suspended Driver License Cases
- Re-Licensing programs
- Diversion of Marijuana Possession Cases
- Diversion of Minor in Possession of Alcohol Cases
- Diversion of Shoplifting Cases

Diverting and Reclassifying Misdemeanors Could Save \$1 Billion per Year:
Reducing the Need For and Cost of Appointed Counsel

- Removing cases from the criminal court system either by diversion or treating them as non-criminal violations can save hundreds of thousands of dollars.

Saving \$1 Billion per Year Nationally


- By diverting or reclassifying these offenses as non-criminal violations, local and state governments could save hundreds of millions, perhaps more than \$1 billion per year. In the process, as outlined in the NACDL report, the reduced burdens on millions of defendants would allow them to work and to meet their obligations, and the unfairness related to racial disparity would be reduced.

Scope of Problem

- Tremendous volume and cost of cases.

Date of Birth	02/20/1993
Sex	F
Race	B
Height	506
Weight	110
Eye Color	BRO
Hair Color	BLK
Arresting Agency	03
Arrest Date	12/21/2015
Charge 1	
VIOLATE TRAFFIC ORDINANCE	
Felony / Misdemeanor	
Indictment #	BOND/CO
Warrant #	
Charge 2	
VIOLATE TRAFFIC ORDINANCE	
Felony / Misdemeanor	
Indictment #	BOND/CO
Warrant #	
Charge 3	
NO DRIVERS LICENSE	
Felony / Misdemeanor	
Indictment #	BOND/CO
Warrant #	
Charge 4	
NO INSURANCE	
Felony / Misdemeanor	
Indictment #	BOND/CO
Warrant #	
Back	

Monday, April 11, 2016 [Contact Webmaster](#)



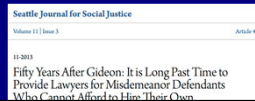
FOUNDED 1821 * POPULATION 248,641

Date of Birth	04/20/1987
Sex	M
Race	B
Height	509
Weight	135
Eye Color	BRO
Hair Color	BLK
Arresting Agency	JPD
Arrest Date	04/05/2016
Charge 1	
VIOLATE TRAFFIC ORDINANCE	
Felony / Misdemeanor	
Indictment #	RORJ
Warrant #	
Charge 2	
CONTEMPT OF COURT	
Felony / Misdemeanor	
Indictment #	PLAN
Warrant #	
Charge 3	
VIOLATION OF PROB	
Felony / Misdemeanor	
Indictment #	
Warrant #	
Charge 4	
Felony / Misdemeanor	
Indictment #	
Warrant #	

Date of Birth	05/08/1987	Date of Birth	07/20/1954
Sex	M	Sex	M
Race	B	Race	B
Height	511	Height	602
Weight	135	Weight	185
Eye Color	BRO	Eye Color	BRO
Hair Color	BRO	Hair Color	GRY
Arresting Agency	03	Arresting Agency	03
Arrest Date	03/10/2016	Arrest Date	04/08/2016
Charge 1		Charge 1	
POSS OF MARIJUANA		CONTEMPT OF COURT	
Felony / Misdemeanor		Felony / Misdemeanor	
Indictment #		Indictment #	
Warrant #		Warrant #	
Charge 2		Charge 2	
CONTEMPT OF COURT		DRIVING WHILE LIC CAN/SUS/REV	
Felony / Misdemeanor		Felony / Misdemeanor	
Indictment #	PLAN	Indictment #	
Warrant #		Warrant #	
Charge 3		Charge 3	
CONTEMPT OF COURT		CONTEMPT OF COURT	
Felony / Misdemeanor		Felony / Misdemeanor	
Indictment #	PLAN	Indictment #	
Warrant #		Warrant #	
Charge 4		Charge 4	
CONTEMPT OF COURT		CONTEMPT OF COURT	
Felony / Misdemeanor		Felony / Misdemeanor	
Indictment #	PLAN	Indictment #	
Warrant #		Warrant #	

SJSJ Article Conclusion

■ It is a disgrace that fifty years after Gideon and forty-one years after Argersinger thousands of accused persons face the power of the state alone. It is not fair, and it is economically foolish and wasteful. The impact on people's lives is dramatic. This problem affects every American.



Work Together

- Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.

– Margaret Mead